

Chapter 10 Nuisances

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10-301 Purpose

- A. The purpose of this ordinance is to provide a means for the City and individuals to identify nuisances within the City and to provide a means for correcting or abating the nuisances.
- B. The City needs the ability to abate nuisances in order to protect the health and safety of the public, to foster neighborhood stability, to preserve the appearance, character and beauty of neighborhoods, to encourage community pride, to preserve the value of property, and to protect the general welfare of the City and its citizens, businesses and visitors. This ordinance provides for progressive enforcement measures to abate nuisances; the most aggressive forms of enforcement are generally reserved for the most recalcitrant violators of the ordinance.

10-302 Definitions

“Abate” means to repair, replace, remove, destroy, correct or otherwise remedy a condition which constitutes a nuisance by such means, in such a manner and to such an extent as the Code Enforcement Officer determines is necessary in the interest of the general health, safety and welfare of the community.

“Active Construction” means any building or structure that is under active construction and has a current and valid building permit.

“Code Enforcement Officer” shall primarily be the Land Use Coordinator, but may also include any code enforcement officer(s) hired by the City to enforce City codes, any Law Enforcement Officer or Designee, the City Fire Chief and the Chief’s assistants, the City Building Inspector, and any authorized representatives of the Building Inspector or Land Use Coordinator.

“Completion Date” means the date by which the Responsible Person must abate a nuisance. The Completion Date is originally set by the Code Enforcement Officer in the Voluntary Correction Agreement or in the administration citation. The Completion Date may be modified by the Hearing Officer.

“Driveway” means a private roadway, the use of which is limited to persons residing, employed, or otherwise using or visiting the parcel on which the driveway is located.

“Driveway extension” means a hard compacted surface that extends from the driveway and which is primarily used for the parking of vehicles and not for traveling between two places. The driveway extension must have a base of asphalt, concrete, stone, or gravel.

“Emergency” means a situation which, in the opinion of the Code Enforcement Officer, requires immediate action to prevent or eliminate an immediate threat to the health or safety of a person or property.

“Hearing Officer” means the person(s) designated to hear appeals pursuant to this ordinance. The Hearing Officer shall be the City Council.

“Owner” means any person who, alone or with others, has title or interest in any building or premises, with or without accompanying actual possession thereof. For the purpose of giving notice, the term Owner also includes any person in physical possession.

“Premises” means a plot of ground, whether occupied or not.

“Property” means a building or structure, or the premises on which the building or structure is located, or undeveloped land.

“Public Place” means an area generally visible to the public view and includes alleys, bridges, driveways, parking lots, parks, plazas, sidewalks, streets, and buildings open to the general public, including those that serve food or drink or provide entertainment, and the doorways and entrances to the buildings of dwellings and the grounds enclosing them.

“Recreational Vehicle” means a motor vehicle or trailer equipped with living space and amenities found in a home.

“Responsible Person” means the person(s) responsible for correcting or abating a nuisance pursuant to this ordinance. The Responsible Person includes the property owner and any person who causes or permits a nuisance to occur or remain upon property including owner(s), lessor(s), lessee(s), or other person(s) entitled to control, use and/occupy property where a nuisance occurs. In cases where there are more than one Responsible Person, the City may proceed against one, some, or all of them.

“Three or More Persons” means three persons, each of which have different residences.

10-305 Nuisance - Definition

This section defines a nuisance by providing three general definitions of what constitutes a nuisance (subsection A), and then providing specific examples of situations, conduct or activities that constitute nuisances (subsection B). The purpose of the general definitions is to allow the City to classify an offending situation, conduct or activity as a nuisance, even though

the situation, conduct or activity may not be listed as a nuisance in the specific examples. The first three general definitions are taken directly from Utah Code Annotated (U.C.A.). The purpose of listing the specific examples is to identify some of the specific situations, conduct and activities that the City intends to abate as nuisances.

A. **General definitions of Nuisance.** Any activity that meets any one or more of the three definitions set forth below shall constitute a Nuisance if it occurs within the City of Kanab.

1. Anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
2. Any item, thing, manner, or condition whatsoever that it is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome.
3. Unlawfully doing any act or omitting to perform any duty, which act or omission:
 - a. annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons.
 - b. offends public decency
 - c. unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway; or
 - d. in any way renders three or more persons insecure in life or the use of property. An act which affects three or more persons in any of the ways specified in this subsection is still a nuisance regardless of the extent to which the annoyance or damage inflicted on individuals is unequal.

B. **Nuisances Enumerated.** Every situation, conduct or activity listed below constitutes a nuisance and may be abated pursuant to this ordinance. The listed examples are not exhaustive; a situation, conduct or activity not listed below, but coming within one of the general definitions of nuisance listed below, or coming within one of the general definitions of nuisance listed above, shall also constitute a nuisance. The first six listed nuisances are also listed as nuisances pursuant to U.C.A.

1. **Drug Houses.** Every building or premises where the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition of any controlled substance, precursor or analog specified in Title 57 of the Utah Code (Utah Controlled Substances Act) occurs.
2. **Gambling.** Every building or premises where gambling is not permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11 of the Utah Code (Gambling).
3. **Gangs.** Every building or premises wherein criminal activity is committed in concert with two or more persons as provided in Title 76, Chapter 3, Part 2, or chapter 9, Part 8, of the Utah Code.
4. **Party Houses.** Every building or premises where parties occur frequently which creates conditions of a nuisance as defined in Section 10-305(A) of this ordinance. "Frequently" shall mean two or more times within thirty days.
5. **Prostitution.** Every building or premises where prostitution or the promotion of prostitution is carried on by one or more persons as provided in Title 76 (Prostitution) of the Utah Code.

6. **Weapons.** Every building or premises where a violation of Title 76 (Weapons) of the Utah Code occurs on the premises.
7. **Noxious Emanations.** Emanation of noxious or unreasonable odors, fumes, gas, smoke, soot or cinders.
8. **Noxious Weeds.** Noxious weeds, as defined by State and County Code, located on vacant lots or other property, along public sidewalks or the outer edge of any public street, or weeds in any other location which constitute a fire hazard.
9. **Refuse.** Keeping or storing of any refuse or waste matter which interferes with the reasonable enjoyment of nearby property or has the potential to be a health hazard.
10. **Stagnant Water.** It shall be unlawful for any person or persons to permit any collection or retention of water, natural or artificial, so as to cause back up and overflow therefrom, or to become unsanitary, stagnant or unhealthy.
11. **Improper Accumulations.** Accumulation of soil, litter, debris, plant trimmings, or trash visible from the street or an adjoining property, for a period of 30 days or more.
12. **Accumulation of Junk.** Accumulation of used or damaged junk, salvage materials, abandoned, discarded or used furniture, stoves, toilets, cabinets, sinks, refrigerators, or other fixtures or equipment stored so as to be visible from a public street or adjoining property, for a period of 30 days or more (except in licensed junk yards). However, this does not include stacked firewood for personal non-commercial use of the premises.
13. **Attractive Nuisances.** Any attractive nuisance, dangerous to children and other persons including, but not limited to, abandoned, broken, or neglected household appliances, equipment and machinery, abandoned foundations or excavations, or improperly maintained or secured pools.
14. **Vegetation.** Dead, decayed, diseased or hazardous trees, weeds, hedges, and overgrown or uncultivated vegetation which is in a hazardous condition, is an obstruction to pedestrian or vehicular traffic, or which is likely to harbor rats, vermin or other pests. This section does not apply to properly contained compost bins.
15. **Weeds/Grass.**
 - a) Any weeds or grasses that, due to height or dryness, constitute a fire hazard as deemed by the fire marshal.
 - b) When, in the opinion of the fire marshal, the large size or terrain of property makes the cutting of all weeds or grasses impractical, the fire marshal, or any assistant fire marshal, may, by written order, allow and limit the required cutting of weeds and grasses to a firebreak of not less than fifteen feet (15') in width cut around the complete perimeter of the property and around any structures existing upon the property, unless the fire marshal, or assistant fire marshal, determines that a firebreak of a lesser width will provide adequate protection against fire spread at the particular location.
16. **Dust.** Any premise which causes excessive dust due to an altering of the natural landscape, or any activity that causes excessive dust.

17. **Improper Storage.** The keeping, storing, depositing or accumulating of dirt, sand, gravel, concrete, construction equipment, or other similar materials, or maintenance of such material, on the premises or in public right-of-way so as to be visible from a public street or adjoining property, for a period of 30 days or more. Material stored as part of an active construction or landscaping project shall not be considered a nuisance.
18. **Construction Equipment.** Construction equipment or machinery of any type of description parked or stored on the street, except while excavation, construction or demolition operations covered by an active building permit are in progress on the subject property, right-of-way or street, or adjoining property or when the property is zoned for the storage of construction equipment and/or machinery.
19. **Improper Sign.** Improper maintenance of a sign, or signs, which advertise a business that is no longer in existence, or signs in violation of City Ordinance.
20. **Improper Parking or Storage.**
 - a. Vehicles must be parked or stored completely and only on a driveway or driveway extension.
 - b. No more than two (2) recreational vehicles may be parked or stored in any driveway or on any driveway extension of a residence.
 - c. No more than one (1) properly secured inoperable vehicle and one (1) recreational vehicle may be parked or stored at the same time in any driveway or on a driveway extension.
 - i. "Inoperable Vehicle" means any motor vehicle that cannot be started and moved under its own power without the assistance of another person, vehicle, or gravity. It also includes any unregistered vehicle.
21. **Hazardous Conditions.** Any wall, sign, fence, gate, hedge, or structure maintained in such condition of deterioration or disrepair as to constitute a hazard to persons or property.
22. **Graffiti.** Graffiti which remains for more than 72 hours on the exterior of any building, wall, fence, sign or other structure and is visible from a public street or right-of-way.
23. **Improper Maintenance.** Maintenance of buildings and/or structures in such condition as to be deemed defective or in a condition of deterioration or disrepair including, but not limited to:
 - a. Any building or structure which is unfit for human habitation, or which is an unreasonable hazard to the health of people residing in the vicinity thereof, or which presents an unreasonable fire hazard in the vicinity where it is located ; or
 - b. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of City ordinances, or premises in violation of City ordinances; or
 - c. Buildings which are abandoned, partially destroyed or left in an unreasonable state of partial construction for a period of six (6) months or longer. An unreasonable state of partial construction is defined as any unfinished building where the appearance or condition of the building or structure does not meet the requirements for finished buildings or structures as required by applicable City ordinances or building codes. The

building or structure shall not be considered to be a nuisance if it is under active construction; or

- d. Buildings having dry rot, warping, termite infestation, decay, excessive cracking, peeling, or chalking as to render the building unsightly and/or in a state of disrepair; or
 - e. Buildings with missing doors and/or windows containing broken glass and/or no glass at all where the window is of a type which normally contains glass; or
 - f. Building exteriors, walls, fences, gates, driveways, sidewalks, walkways, signs or ornamentation, or alleys maintained in such condition as to render them unsightly and/or in a state of disrepair; or
 - g. Buildings or conditions which violate any building, electrical, plumbing, fire, housing, or other code adopted by the City.
24. **Alcohol.** Every property or premise not licensed under applicable State law or City ordinance where any intoxicating liquors or alcohol are kept for unlawful use, sale or distribution.
25. **Electrical Disturbances.** Electrical installations for signs, equipment, or other facilities which create electrical disturbances that cause interference with normal radio or television reception beyond the immediate vicinity of such electrical installations.
26. **Hazardous Trees.** Any dead or diseased tree on public or private property within the City, when such tree threatens the public safety, constitutes a hazard to life and property, or harbors insects or diseases that constitute a potential threat to other trees.
27. **Pruning.** A tree located on private property but which overhangs any street or right of way within the City that is not pruned so that there is a clear space of eight feet (8') above the surface of the sidewalk, twelve feet (12') above the street or fifteen feet (15') above the UDOT corridor. Also, any dead, diseased, dangerous, broken or decayed limbs that constitute a menace to the safety of the public, or any tree or shrub that is not pruned so as to not interfere with the visibility of any traffic control device or sign.
28. **Noise.** Using any devices which produce an audible report, blast, siren, or other offensive noise, including but not limited to the use of jake brakes within the City limits. This section shall not apply to emergency vehicles or sirens.
29. **Excessive Animal Noise.** A. Possessing or owning an animal or fowl and to allow the animal or fowl to make a sound or combination of sounds that are frequent, repetitive, or continuous, and loud or raucous to the extent that the sound or sounds unreasonably disturbs or interferes with the peace, comfort or repose of another, including but not limited to barking, howling, braying, quacking and crowing.

B. It shall be prima facie evidence that the noise referred to in subsection A is frequent, repetitive or continuous if it occurs:

i) Between the hours of 10:01 p.m. and 7:00 a.m. and continuously for a period of five minutes or more, or intermittently for a period of fifteen minutes or more; or

ii) Between the hours of 7:01 a.m. and 10:00 p.m. and continuously for a period of fifteen minutes or more, or intermittently for a period of thirty minutes or more.

C. It shall be prima facie evidence that the noise referred to in subsection A is loud or raucous to the extent that it unreasonably disturbs or interferes with the peace comfort or repose of another if the sound can be heard anywhere on the property of another.

30. **Kanab Creek Dumping.** No dumping allowed in Kanab Creek, unless the material dumped is a state-approved erosion control material.

10-310 Exceptions

No act which is done or maintained under the express authority of an authoritative statute, ordinance or court ruling shall be declared a nuisance.

No building, structure, or use of land that is specifically allowed under any city land use ordinance shall be declared a nuisance.

The following above subsections do not apply to commercial property in commercially zoned areas where such items are an integral part of the property's commercial operation: (17) Improper Storage and (20) Improper Parking or Storage.

The following above subsections do not apply if a proper fence, wall, hedge, or other well-maintained appropriate barrier reasonably blocks the visibility of the items from the street or adjoining properties: (11) Improper Accumulation, (12) Accumulation of Junk, (17) Improper Storage, and (20) Improper Parking or Storage.

10-312 Responsibility For Nuisances

The Responsible Person(s) is responsible for abating nuisances pursuant to this ordinance. Any person, whether owner, agent or occupant, who creates, aids in creating, or contributes to a nuisance, or who supports, continues or retains a nuisance is responsible for the nuisance and is therefore a Responsible Person pursuant to this ordinance. Every successive owner or tenant of a property or premises who fails to abate a continuing nuisance upon or in the use of such property or premises caused by a former owner or tenant is responsible therefore in the same manner as the one who first created it.

10-316 Finding A Nuisance - Responsibility

- A. It is the City's intent not to seek out or proactively find nuisances on private property. Instead, a Code Enforcement Officer will generally only investigate a nuisance on private property if the City has received a complaint from three or more persons, regarding the same nuisance, all of whom live within 500 feet of the nuisance. An exception to this practice applies to i) nuisances on public property or ii) nuisances on private property that a Code Enforcement Officer has determined to be primarily a health or safety hazard. While this is generally the City's practice, such practice does not preclude the Code Enforcement Officer from, at his or her discretion, investigating nuisance violations.
- B. If a Code Enforcement Officer finds that a nuisance exists, the Code Enforcement Officer shall attempt to have the Responsible Person abate the nuisance. Although the Code Enforcement Officer's first step in correcting or abating the nuisance will always be to obtain voluntary compliance, the City may pursue any remedy or combination of remedies available pursuant to this ordinance, State law or common law in order to abate the nuisance. Nothing in this section shall be interpreted to prohibit the City from engaging in its standard prosecution practices. Nothing in this ordinance shall be interpreted to prevent the City from enforcing applicable City ordinances, ICC building codes, or the Uniform Code for the Abatement of Dangerous Buildings without first treating the offending conduct, situation or activity as a nuisance pursuant to this ordinance.

10-318 Voluntary Correction

This section applies whenever a Code Enforcement Officer or other peace officer determines that a nuisance exists.

- A. **Contact.** Before taking other steps to abate the nuisance, a Code Enforcement Officer shall make a reasonable attempt to secure voluntary correction or abatement of the nuisance by:
 - 1. Contacting the Responsible Person, where and when possible;
 - 2. Explaining the nuisance;
 - 3. Requesting the Responsible Person to abate the nuisance; and
 - 4. Agreeing to terms with the Responsible Person to abate the nuisance.
- B. **No Agreement.** If the Code Enforcement Officer and the Responsible Person cannot agree to terms for correcting or abating the nuisance, the Code Enforcement Officer may still abate the nuisance using one or more of the procedures set forth in this ordinance, State law, or common law.
- C. **Voluntary Correction Agreement.** If the Code Enforcement Officer and the Responsible Person agree to terms for abating the nuisance, they shall enter into and sign a Voluntary Correction Agreement. The Voluntary Correction Agreement is a contract between the City and the Responsible Person in which the Responsible Person agrees to abate the nuisance within a specified time and according to specified conditions. The voluntary Correction Agreement shall include the following terms:
 - 1. The name and address of the Responsible Person;
 - 2. The street address of the nuisance, or a description sufficient to identify the building, structure, premises, or land upon which or within which the nuisance is occurring;

3. A description of the nuisance;
 4. The necessary corrective action to be taken, and a date or time by which the corrections must be completed;
 5. An agreement by the Responsible Person that the City may inspect the premises as may be necessary to determine compliance with the Voluntary Correction Agreement;
 6. An agreement by the Responsible Person that the City may abate the nuisance and recover its costs and expenses to abate the nuisance, as well as a monetary fine pursuant to this ordinance from the Responsible Person, if terms of the Voluntary Correction Agreement are not met;
 7. An agreement by the Responsible Person acknowledging that he/she waives the right to appeal the Code Enforcement Officer's finding that a nuisance exists and waives the right to appeal the specific corrective action required in the Voluntary Correction Agreement; and
 8. An agreement by the Responsible Person that failure to comply with the Voluntary Correction Agreement may be grounds for criminal prosecution.
- D. **Time Extension or Fulfillment.** The Code Enforcement Officer may grant an extension of the time limit for correcting or abating the nuisance if the Responsible Person has shown due diligence and/or substantial progress in correcting or abating the nuisance but unforeseen circumstances render abatement under the original conditions unattainable. The Code Enforcement Officer shall first obtain approval from the City Manager before any time extension is granted.
- E. **Compliance.** If the Responsible Person complies with the terms of the Voluntary Correction Agreement, the City shall take no action against the Responsible Person related to the nuisance described in the Voluntary Correction Agreement unless the nuisance reoccurs.

10-320 Administrative Citation

- A. **Administrative Citation.** When a Code Enforcement Officer determines that a nuisance exists and is unable to secure voluntary correction pursuant to the provisions of this Chapter, the Code Enforcement Officer may issue an administrative citation. Also, an administrative citation may be issued without first having attempted to secure voluntary correction under the following circumstances:
1. When an emergency exists;
 2. When the Code Enforcement Officer is unable to locate or determine the identity of the Responsible Person; or
 3. When the Responsible Person has failed in the past to fulfill the terms of a Voluntary Correction Agreement.
- B. **Content of Administrative Citation.** The administrative citation shall include the following:
1. The name and address of the Responsible Person;
 2. The street address of the nuisance or a description sufficient for identifying the building, structure, premises, or land upon or within which the nuisance is occurring;
 3. A description of the nuisance;

4. The required corrective action;
 5. The Completion Date and a notice that the City may abate the nuisance and charge the Responsible Person for all abatement costs if the Responsible Person does not correct the nuisance on or before the Completion Date;
 6. The time for appealing the administrative citation to the Hearing Officer and the procedure for filing an appeal;
 7. A statement indicating that no monetary fine will be assessed if the Code Enforcement Officer approved the completed, required corrective action prior to the Completion Date; and
 8. A statement that the City may abate the nuisance and assess costs and expenses of abatement and a monetary fine against the Responsible Person if the correction is not completed by the Responsible Person and approved by the Code Enforcement Officer on or before the Completion Date.
- C. **Service of Administrative Citation.** The Code Enforcement Officer shall serve the administrative citation upon the Responsible Person, either personally or by mailing, certified, return receipt requested, a copy of the administrative citation to the Responsible Person at his/her last known address. If the Responsible Person cannot after reasonable attempts be personally served within Kane County and if an address for mailed service cannot after reasonable attempts be ascertained, notice shall be served by posting a copy of the administrative citation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that reasonable attempts were used in attempting to serve the person personally or by mail.
- D. **Time Extension.** The Code Enforcement Officer may grant an extension of the time limit for correcting or abating the nuisance if the Responsible Person has shown due diligence and/or substantial progress in correcting or abating the nuisance but unforeseen circumstances render abatement under the original conditions unattainable. The Code Enforcement Officer shall first obtain approval from the City Manager before any time extension is granted.

10-322 Other Remedies

The City may take one or more of the following actions against any Responsible Person who fails to comply with the terms of the Voluntary Consent Agreement, Administrative Citation, or an order of the Hearing Officer:

A. **Abatement by the City.**

1. The City may abate a nuisance when:
 - a. The terms of a Voluntary Correction Agreement have not been met;
 - b. The requirements of an administrative citation have not been complied with, or, if the administrative citation is appealed to a Hearing Officer and the terms of the administrative citation are amended by the Hearing Officer, the terms of the Hearing Officer's order have not been complied with; or

- c. The condition is subject to summary abatement as provided in subsection 2, below.
 2. Whenever a nuisance is occurring which constitutes an immediate and emergent threat to public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the Responsible Person as soon as reasonably possible after the abatement.
 3. Using any lawful means, the City may enter upon the subject property and may remove or correct the condition which is subject to abatement. The City may seek, but is not required to seek, such judicial process as it deems necessary to effect the removal or correction of the condition.
 4. To collect costs, the City will follow the procedures outlined in Utah Code 10-11-3(1)(a)(ii). The costs, including incidental expenses, of correcting or abating the violation shall be billed to the Responsible Person and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the City within thirty (30) days of the mailing date if the bill is mailed. The term Incidental Expenses includes, but is not limited to:
 - a. Personnel costs, both direct and indirect, including attorney fees and costs;
 - b. Costs included in documenting the violation;
 - c. Hauling, storage and disposal expenses;
 - d. Actual expenses and costs for the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and
 - e. The costs of any required printing and mailing.
- B. **Monetary Fine.** The Responsible Person shall pay the City a monetary fine for each day the nuisance continues after the Completion Date. The nuisance shall be considered to continue until the Code Enforcement Officer approves the Responsible Person's actions to correct or abate the nuisance. The amount of the monetary fine shall be as follows:
1. One Hundred Dollars (\$100.00) per day for each day during their first week that the nuisance remains uncorrected or unabated after the Completion Date;
 2. Two Hundred Dollars (\$200.00) per day for each day thereafter until the nuisance is corrected or abated according to the terms set forth in the administrative citation. The monetary fine shall be cumulative. Payment of a monetary fine pursuant to the section does not relieve the Responsible Person from the duty to abate the nuisance as required by the Voluntary Consent Agreement or the Administrative Citation. The monetary fine constitutes a personal obligation of the Responsible Person. Any monetary fine assessed must be paid to the City within (30) days from the date of mailing of the Hearing Officer's decision and order or a notice from the City that the fine is due. The City Attorney and his/her designee is authorized to take appropriate action to collect the monetary fine, plus reasonable attorney fees and costs incurred in collecting said monetary fine.
- C. **Civil Actions.** Either the City or any private person directly affected by a nuisance may bring civil action to abate or enjoin the nuisance, or for damages for causing or maintaining the nuisance (including cost, if any, of cleaning the subject property). The civil action may be brought pursuant to this ordinance or pursuant to State law.

- D. **Criminal Actions.** Criminal actions may be initiated by criminal citation from a Code Enforcement Officer or by long form Information.
1. Any person who maintains or assists in maintaining a nuisance is guilty of a Class C misdemeanor. No person shall be prosecuted under this subsection (1) unless a Code Enforcement Officer first attempted to obtain voluntary correction pursuant to this chapter.
 2. If the alleged nuisance is also a violation of a provision of City Code (other than this nuisance ordinance) or State law, the Responsible Person may be charged under the specific provision of City Code or State law, even if a Code Enforcement Officer did not first attempt to obtain voluntary correction as provided in this ordinance.
 3. Any person who knowingly obstructs, impedes, or interferes with the City or its agents, or with the Responsible Person, in the performance of duties imposed by this ordinance, or a decision and Order issued by the Hearing Officer, or a Voluntary Correction Agreement, is guilty of a Class B misdemeanor.
 4. Any violation under this subsection requires mandatory court appearance by the cited individual.
- E. **Abatement by Eviction.** Whenever there is reason to believe that a nuisance under section 10-305(B) (1-6) is kept and maintained, or exists in the City, the City Attorney or any citizen(s) residing in the City, in his or her own names, may maintain an action in a court of competent jurisdiction to abate the nuisance and obtain an order for the automatic eviction of the tenant of the property harboring the nuisance. The eviction shall take place as specified in Utah law.
- F. **Lien for Costs.** If a person fails to pay any fines or costs related to nuisance abatement when due, the City may record a lien on the property or premises associated with the nuisance for the full amount of unpaid fines and costs. The City, in accordance with Utah Code 10-11-4, may pursue unpaid costs and expenses through certification to the County Treasurer.
- G. **Abatement of Dangerous Buildings.** The "Uniform Code for the Abatement of Dangerous Buildings," 1997 edition, with any official amendments, is hereby approved and adopted as the Abatement of Dangerous Buildings Code of this municipality. All buildings or portions thereof which are determined after inspection by the building official to be dangerous, as defined in the Abatement of Dangerous Building Code, are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with procedures specified in the Uniform Code for the Abatement of Dangerous Buildings.
- H. **Non-exclusive Remedies.** The City may take any or all of the above-mentioned remedies (administrative, civil or criminal) to abate a nuisance and/or punish any person or entity who creates, causes or allows a nuisance to exist. The abatement of a nuisance does not prejudice the right of the City or any person to recover damages or penalties for its past existence.

10-324 Appeals

- A. **Grounds.** Any person receiving an administrative citation may appeal the administrative citation to the Hearing Officer. Only the following issues may be appealed to the Hearing Officer:
1. The person charged in the administrative citation as the Responsible Person is not the Responsible Person as defined by this ordinance.
 2. The condition described as a nuisance in the administrative citation is not a nuisance as defined by this ordinance.
 3. The method required by the administrative citation to abate the nuisance is inappropriate or is not the most cost effective method of effectively correcting or abating the nuisance.
 4. The time period given to abate the nuisance in the administrative citation is unreasonable.
 5. The monetary fine set forth in the administrative citation is unreasonable.
 6. The Code Enforcement Officer refused to approve a corrective action that met the requirements of the administrative citation.
 7. The Responsible Person claims that the requirement(s) of the administrative citation violates his/her constitutional rights.
- B. **Filing.** The person desiring to appeal must file a notice of appeal within ten (10) days of receipt of the administrative citation or within fifteen (15) days of the mailing date if the administrative citation was mailed.
- C. **Hearing.** The hearing before the Hearing Officer shall be informal according to rules and procedures established by the Hearing Officer. The appellant may, but is not required to, bring an attorney or other representative to assist him or her. The appellant and the Code Enforcement Officer may each call witnesses at the hearing. The Hearing Officer may, with or without the parties present, visit the site of the alleged nuisance. If the Hearing Officer allows parties at the site visit, both parties must be given the opportunity to be present. The hearing shall be scheduled by the Hearing Officer within thirty (30) days of when the notice of appeal is filed with the City.
- D. **Burden of Proof.** The appellant shall have the burden of proof to demonstrate by a preponderance of the evidence that he/she had legitimate grounds for the appeal. The determination of the Code Enforcement Officer as to the need for the required corrective action shall be accorded substantial weight by the Hearing Officer in determining the reasonableness of the corrective action.
- E. **Authority of the Hearing Officer.** The Hearing Officer shall have authority to affirm or vacate the administrative citation, or to modify or waive specific provisions of the administrative citation. If the appellant fails to attend the hearing, the Hearing Officer shall affirm the administrative citation. Before the Hearing Officer may address the merits of the appeal, he or she must first determine if the appeal is timely. If it is untimely, the Hearing Officer shall affirm the administrative citation. The Hearing Officer shall not vacate the administrative citation unless he/she finds that no nuisance exists. The Hearing Officer shall modify the administrative citation if he/she finds that a nuisance exists, but that one or more of the requirements of the administrative citation is improper or inappropriate. A requirement is improper if it is contrary to this ordinance. A requirement is inappropriate if the Hearing Officer finds that there is a better means of resolving the problem or that the proposed solution is inappropriate given the nature or

severity of the problem. When determining whether to waive or modify a requirement of the administrative citation, the Hearing Officer may also consider:

1. Whether the appellant responded to the Code Enforcement Officer's attempts to contact the appellant and cooperated with efforts to correct the nuisance;
2. Whether the appellant has shown due diligence and/or substantial progress in correcting the nuisance;
3. The financial ability of the appellant and the amount, if any, that the appellant has benefitted financially by maintaining a nuisance.
4. Any other relevant factors. If the appellant appeals the Code Enforcement Officer's refusal to approve the appellant's corrective action, the Hearing Officer shall visit the site and determine if the appellant complied with the requirements of the administrative citation.

F. **Order.** The Hearing Officer shall issue a written Order to the appellant and the Code Enforcement Officer notifying them of his/her decision. The Order shall include the Hearing Officer's findings of fact and ultimate decision. If the Hearing Officer modifies or waives provisions of the administrative citation, the Order shall specify which portions are modified and how they are modified. The Hearing Officer shall mail a copy of the Order to the appellant and the City within five (5) working days of the close of the hearing.

G. **Appeal to Kane County Justice Court.** Either the City or the appellant may appeal the Hearing Officer's Order by filing a petition for review of the Order. The petition must be filed in the Kane County Justice Court within thirty (30) days from the date the Hearing Officer's Order was mailed to the appellant. In the petition, the plaintiff may only allege that the Hearing Officer's order was arbitrary, capricious or illegal. The Hearing Officer shall transmit to the reviewing court the record of its proceedings, including any minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

If, in the opinion of the Justice Court, there is a sufficient record to review the Hearing Officer's Order, the Court's review is limited to the record provided by the Hearing Officer. The Justice Court may not accept or consider any evidence outside the Hearing Officer's record unless the evidence was offered to the Hearing Officer and the Court determines that it was improperly excluded by the Hearing Officer. If, in the opinion of the Justice Court, there is not a sufficient record to review the Hearing Officer's Order, the Court may call witnesses and take evidence. No petition or appeal may be filed in Justice Court unless the Responsible Person first appeals to the Hearing Officer pursuant to the terms set forth in this ordinance. Furthermore, the Justice Court shall not have jurisdiction to hear the merits of the appeal if the appeal is untimely in any stage.